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NOMINATION OF LINDA J. MORGAN TO BE A  
MEMBER OF THE INTERSTATE COMMERCE  
COMMISSION

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Y 4. C 73/7: S. HRG. 103-677

Nomination of Linda J. Morgan to be...

## HEARING

BEFORE THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

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FEBRUARY 24, 1994

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Printed for the use of the Committee on Commerce, Science, and Transportation



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# NOMINATION OF LINDA J. MORGAN TO BE A MEMBER OF THE INTERSTATE COMMERCE COMMISSION

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THURSDAY, FEBRUARY 24, 1994

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:15 a.m. in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: William Clyburn, Jr., staff counsel, and Rebecca A. Kojm, professional staff member; and Emily J. Gallop, minority professional staff member.

## OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. The committee will come to order with our apologies for running a little behind. But as our general counsel, you know that can happen.

Ms. MORGAN. Yes, sir. [Laughter.]

The Commerce Committee is meeting today to consider the nomination of Linda J. Morgan to be a Commissioner on the Interstate Commerce Commission.

The ICC is an independent agency composed of five Commissioners, who are responsible for the regulation of surface transportation issues. The term for which Ms. Morgan has been nominated will expire December 31, 1998.

This committee has oversight over transportation regulation and policy, and understands the difficult issues the ICC often faces. The ICC must determine reasonable shipping rates in disputes between shippers and motor carriers; assist parties affected by railroad mergers, sales, construction, and abandonments; and balance free market competition in the transportation industry with the public need for quality service at reasonable prices. These tasks require a clear understanding of the surface transportation industry and regulatory policies. I therefore am delighted to consider the nomination of Linda, who comes before us with an impressive combination of qualifications and experience, for Commissioner on the ICC.

Linda has served me and other members of this committee well for 15 years. She served for 8 years as counsel on the Surface Transportation Subcommittee, which often considers matters related to the ICC, and economic and safety matters in surface transportation. She served the last 7 years as General Counsel for the full committee, where she involved herself further with legislative

initiatives pertaining to significant surface transportation issues. Linda's efforts have contributed to the passage and oversight of the Staggers Rail Act of 1980, the Motor Carrier Act of 1980, the Bus Regulatory Reform Act of 1982, the Negotiated Rates Act of 1993, and a host of other important commerce-related enactments.

The Committee's loss is the ICC's gain. The ICC will gain a knowledgeable, objective, and well-qualified Commissioner with special expertise in surface transportation issues. For my part, I will miss her counsel and attentiveness to the Committee's responsibilities.

I look forward to Linda's testimony and, if confirmed, her service on the ICC.

Ms. Morgan, the committee welcomes you. Normally they would have someone here to introduce you. The committee introduces you because we have had you for 15 years doing outstanding work for the committee in every field. I emphasize this. You have not been involved in just the transportation field going to the Interstate Commerce Commission, but more particularly all fields of endeavor with respect to maritime, communications, consumer affairs, product safety, and all the other areas in which this committee has jurisdiction.

We know that you are more than qualified. I would be glad to yield to my colleagues. I know they would want to welcome you.

Senator DANFORTH. Well, Mr. Chairman, thank you very much. As you pointed out, we have known Linda Morgan for a long time on this committee. The audience is made up of, among other people, various individuals who have worked with Linda on the committee staff, Republicans and Democrats. She is universally highly regarded as a competent person, a wise and bright person, and as a first-rate human being. I think that she is an excellent nominee—she is, as you say, very, very well equipped by ability and experience to do the work of the ICC, if there is any to be done. [Laughter.]

Ms. MORGAN. No comment.

Senator ROCKEFELLER. Mr. Chairman, as one who can remember in not the very recent—not the very distant past that there was a great deal of work to be done at the Interstate Commerce Commission, I greatly welcome Linda Morgan and her coming onto that position. I think that is the oldest agency of State government—of Federal Government, and I share what Senator Danforth has said to Linda Morgan. That is that she is a deeply competent, highly moral, highly excellent human being.

I talk from time to time about the need for people who want to serve in public service. I respect that very much. People often opt not to because they can do "better" outside. I have never had that view and obviously neither do you. So, I respect very much this nomination. She follows—Linda Morgan follows in a long line of excellent people that Chairman Fritz Hollings has had working for him and for us, and I welcome you and look forward to voting for you.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Briefly, Mr. Chairman, let me say I am very pleased to support this nomination. I have spent at least part of my 14 years here in Washington claiming that the Interstate Com-

merce Commission has been dead from the neck up, and I am beginning to refine that view with some more recent appointments. And my hope is that Linda Morgan will become an expert on the subject of grain cars and hauling wheat. [Laughter.]

And barley and durum. And I look very much forward to our association.

The CHAIRMAN. Senator Mathews.

Senator MATHEWS. Mr. Chairman, as freshman member of this group I have not had the chance to know Linda as well as some of you have, but I have been very impressed with the caliber of the staff that you have put together and I know that Linda will do the same high-level work there that she has done for this committee, and I congratulate her and I look forward to supporting her nomination.

The CHAIRMAN. Very good.

Senator Gorton.

Senator GORTON. Well, Mr. Chairman, I am not sure that this is exactly a promotion. [Laughter.]

But to the extent that Linda considers it to be a promotion, I am delighted to second the nomination. [Laughter.]

The CHAIRMAN. Well we are honored too this morning to have Linda's mother, Mrs. Morgan, her husband, Mr. Karam, and little daughter Meredith here. We welcome you to the committee hearing this morning and, Linda, we would be glad to hear from you.

#### **STATEMENT OF LINDA J. MORGAN, GENERAL COUNSEL, COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION**

Ms. MORGAN. Thank you very much, Mr. Chairman. First of all, I appreciate your introducing my family, without whose support, enthusiasm, and encouragement I would not be where I am today. I also would like to mention another member of my family who is not here, my late father Ed Morgan. He inspired me in many ways, but in particular he impressed upon me the fact that there is no greater honor, contribution, or reward than public service. And further that no matter how much one has done and learned, there is always more to be done and more to be learned. As I proceed ahead, I will keep these thoughts in mind.

Thank you, Mr. Chairman, for chairing this hearing and for your gracious comments, and I also appreciate the attendance and comments of all the other members here today. It is truly a privilege for me to be before the committee with which I have been proudly associated for 15 years. I ask that my opening statement be included in the record in full, and I will summarize a few points.

Before proceeding, I would like to recognize the three Commissioners from the ICC who are here today with me, and I appreciate that they are here: Chairman McDonald, Vice Chair Phillips, and Commissioner Simmons. I very much appreciate their support here today.

I am honored to be President Clinton's first nominee to the Interstate Commerce Commission. The ICC has been given important authority by Congress with respect to the future of transportation, and I take seriously the responsibilities that I, if confirmed as ICC Commissioner, will have in shaping that future. Transportation is critical to the economic development and competitiveness of our

country, and I am excited about the prospect of being able to contribute to these important missions.

As you know, Congress in the early 1980's passed rail and motor carrier regulatory measures which were intended to change, and indeed have changed significantly, the face of the surface transportation industry. The ICC has played a significant role in the development of this new transportation world through its implementation of these congressionally mandated regulatory reform measures.

The ICC continues to have responsibility given to it by Congress to address the many important implementation issues that remain. As the ICC proceeds on these issues, it must remember that it has been charged by Congress with promoting a sound transportation system and protecting the public interest in the exercise of its regulatory authority. This mandate requires a delicate balance of many objectives intended to achieve the best transportation system possible.

There is need to ensure financially healthy, efficient, and cost-effective carriers in the private sector; quality service at reasonable rates; transportation service throughout the country; and a vibrant workforce. The ICC must consider all of these interests carefully, balancing them in accordance with the laws it has been entrusted by Congress to implement.

If confirmed, I believe that I can bring much to the deliberations on these issues. I can offer a valuable perspective on the evolution of the laws that the ICC implements. I will approach the position of ICC Commissioner with a strong commitment to fairness, objectivity, and balance. I will take seriously the role of the ICC as an independent regulatory agency and a quasijudicial body to be seen by parties as an impartial forum that carefully reviews the facts and issues of each matter before it. In addition, I will take seriously the responsibility of the ICC to implement the law as intended.

Finally, I look forward to working with the other ICC Commissioners to foster and maintain a spirit of creativity, collegiality, consensus, and bipartisanship in the agency's deliberations—all important factors in the significant success of this committee over the years that I have been associated with it.

I look forward to working with the other ICC Commissioners, Congress, and other interested parties to ensure that the ICC can be a positive force as we all work to make the transportation system of the future even better than the one we have today.

On a more personal note, Mr. Chairman, I thank you for the invaluable opportunity to have worked for you for the last 11 years. You always have challenged me to think through issues thoroughly to ensure that all sides are understood, and to make decisions that are based on what is right and fair. Also, you have impressed upon me the importance of personal and professional integrity. You definitely have prepared me well for my future challenges.

I also extend my thanks to the rest of the committee members for all the kindness and respect which you have shown me over the years. I consider it a great privilege to have worked for the Commerce Committee. I continue to believe that this is one of the best and most respected committees in Congress, with the finest staff.

I always will proudly consider myself a member of the Senate Commerce Committee family.

Thank you, Mr. Chairman, and I would be happy to answer any questions that you or the other members might have.

[The prepared statement, biographical data, and prehearing questions and answers of Ms. Morgan follow:]

#### PREPARED STATEMENT OF LINDA J. MORGAN

Thank you very much, Mr. Chairman, for chairing this hearing. I sincerely appreciate your continuing support and encouragement. I also appreciate the attendance of all the Members here today. It is indeed a privilege for me to be before the Committee with which I have been proudly associated for 15 years.

I am honored to appear here today as president Clinton's first nominee to the Interstate Commerce Commission (ICC). The ICC has been given important authority by Congress with respect to the future of transportation, and I take seriously the responsibilities that I, if confirmed as an ICC Commissioner, will have in shaping that future. Transportation is critical to the economic development and competitiveness of our country, and I am excited about the prospect of being able to contribute to these important missions.

We are reminded daily of the importance of surface transportation to the Nation's economy. Freight railroads and trucks carry a variety of goods across the country, to small towns and big cities, to large businesses and small companies. In addition, intercity buses provide important transportation alternatives to many people across the country. The service, cost, efficiency and financial viability of these carriers are critical to the conduct of business in this country. Surface transportation employs millions of people both in the carrier industry and in the businesses and communities that use the surface transportation network. Thus, the promotion of an efficient and cost-effective transportation system that provides service throughout the country is critical to many local economies, as well as the economy of the Nation as a whole.

Understanding the importance of surface transportation to the economy and to the transportation needs of the country, Congress in the early 1980s passed rail and motor carrier regulatory reform measures which were intended to change, and indeed have changed significantly, the face of this industry. With respect to the rail freight sector, after many years of steady financial decline and widespread bankruptcies, this industry is now viewed as competitive—one that can provide good quality, just-in-time service; that understands the importance of marketing its product, and can respond to price and service needs of individual shippers; and that is offering lower rates. The motor carrier industry has experienced a significant increase in new entrants with broader operating authority and, while it also has experienced numerous bankruptcies, is viewed as a whole as being able to provide more service and price options with more efficiency. We find a surface transportation industry in which there is strong intermodal and intramodal competition as well as important growth in multimodal transportation.

The ICC has played a significant role in the development of this new transportation world through its implementation of these Congressionally mandated regulatory reform measures. The ICC continues to have the responsibility given to it by Congress to address the many important implementation issues which remain.

The agency's exercise of its authority over rail mergers, abandonments, and line sales will continue to have an important impact on the scope and competitiveness of the rail network. Decisions affecting labor protection agreements in such rail transactions will have a significant effect on the consummation of such transactions and on the livelihood of affected employees. The ICC will be making further decisions affecting the reasonableness of rail rates. Grain car supply continues to be of concern. The ICC's responsibilities with respect to motor carrier fitness are important to the safety and viability of the motor carrier industry. Issues relating to the truck rate undercharge crisis and tariff filings remain a part of the ICC's authority. The disposition of issues such as these will have a profound impact on carriers, shippers, employees, local communities and consumers throughout the country.

As the ICC proceeds on these issues, it must remember that it has been charged by Congress with promoting a sound transportation system and protecting the public interest in the exercise of its regulatory authority. This mandate requires a delicate balance of many objectives intended to achieve the best transportation system possible. There is need to ensure financially healthy, efficient and cost-effective carriers in the private sector; quality service at reasonable rates; transportation service throughout the country; and a vibrant workforce. To achieve these goals, competi-

tion in the surface transportation industry must be promoted and preserved. In an ever-changing transportation marketplace with accompanying economic shifts, the ICC must consider all these interests carefully, balancing them in accordance with the laws it has been entrusted to implement by Congress, and ensuring that its available resources are being applied in the most productive and appropriate way to achieve these goals.

If confirmed, I believe that I can bring much to the deliberations on these issues. First of all, from my work on many transportation legislative initiatives considered by this Committee over the years, I can offer a valuable perspective on the evolution of the laws that the ICC implements. Secondly, I have a keen understanding of the history of the ICC and the controversies associated with its past. Over the last decade, the ICC has been viewed too often as a biased policymaker, rather than an impartial arbiter that fairly implemented the policy enacted by Congress in accordance with the law. The Commissioners often were viewed as polarized and divided, and the agency seemed to lose much of the confidence and credibility needed to facilitate the resolution of the many difficult issues which it faced.

With this history in mind, I will approach the position of ICC Commissioner with a strong commitment to fairness, objectivity, and balance. I will take seriously the role of the ICC as an independent regulatory agency and a quasi-judicial body to be seen by parties as an impartial forum that carefully reviews the facts and issues of each matter before it. In addition, I will take seriously the responsibility of the ICC to implement the law as intended. Finally, I look forward to working with the other ICC Commissioners to foster and maintain a spirit of creativity, collegiality, consensus, and bipartisanship in the agency's deliberations—all important factors in the significant success of this Committee over the years that I have been associated with it.

In closing, Congress has given the ICC an important mission in shaping the future of transportation in this country. I am indeed honored to have been chosen by president Clinton to be part of this mission. I look forward to working with the other ICC Commissioners, Congress and other interested parties to ensure that the ICC can be a positive force as we all work to make the transportation system of the future even better than the one we have today.

On a more personal note, Mr. Chairman, I thank you for the invaluable opportunity to have worked for you for the last 11 years. You always have challenged me to think through issues thoroughly to ensure that all sides are understood, and to make decisions based on what is right and fair. Also, you have impressed upon me the importance of personal and professional integrity. You definitely have prepared me well for my future challenges.

I also extend my thanks to the rest of the Committee Members for all the kindness and respect that you have shown me over the years. I consider it a great privilege to have worked for the Senate Commerce Committee. I continue to believe that this is one of the best and most respected Committees in Congress, with the finest staff. I always will proudly consider myself a member of the Senate Commerce Committee family.

Thank you, Mr. Chairman, and I would be happy to answer any questions that you and the other Members might have.

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#### BIOGRAPHICAL DATA

Name: Morgan, Linda Joan; address: 6206 Newburn Drive, Bethesda, MD 20816-1134; business address: Senate Committee on Commerce, Science, and Transportation, 508 Dirksen Senate Office Bldg., Washington, DC 20510.

Position to which nominated: Commissioner, Interstate Commerce Commission; date of nomination: February 2, 1994.

Date of birth: May 19, 1952; place of birth: Chester County, PA.

Marital status: Married; full name of spouse: Michael Emile Karam; names and ages of children: Meredith Lyn Morgan Karam, 8.

Education: Harvard University's John F. Kennedy School of Government, August 1991, completed course; Program for Senior Managers in Government, 3 weeks; Georgetown University Law Center, 8/73-5/76, JD; Vassar College, 9/69-5/73, AB Hispanic Studies; and the Sidwell Friends School, 9/59-6/69, High School Diploma.

Employment: 1/87-present, U.S. Senate Committee on Commerce, Science, and Transportation, General Counsel; 10/78-12/86, U.S. Senate Committee on Commerce, Science, and Transportation, Democratic Staff Counsel; 9/76-10/78, Welch & Morgan, Attorney/Associate; 6/74-1/76, Georgetown University Law Center, Research Assistant; and summer 1974 and 1975, Bowl America, Front Desk Work (5-10 hours/week).

Government experience: President, Board of Directors, Sumner Square Condominium, 1982-85, elected but nonpaying position which involved operating the condominium and interacting with local governmental entities on issues of importance to the community; and Co-President and Co-Vice President, Board of Directors, Wood Acres Citizens Association, 1990-92, elected but nonpaying positions which involved coordination of neighborhood activities and interaction with local governmental entities on issues of importance to the neighborhood.

Political affiliations:

Michael E. Karam:

10/83	Hollings for President .....	\$50
3/84	Hart for President Committee .....	200
6/84	Hart for President .....	250
12/85	1985 Dollars for Democrats .....	25
5/86	Democratic Senatorial Campaign Committee .....	100
5/86	Morissey for Congress (Oklahoma) .....	100
7/86	Mike Barnes for Democrats .....	75
10/86	1986 Dollars for Democrats .....	25
10/86	Democratic Senatorial Campaign Committee .....	500
12/87	Democratic Senatorial Campaign Committee .....	500
8/88	Democratic Senatorial Campaign Committee .....	750
8/89	John Kerry for Senate in 1990 Committee .....	100
12/89	Democratic Senatorial Campaign Committee .....	100
9/92	Committee to Retain Judge Letoruneau (OR) .....	250
9/92	Dollars for Democrats .....	25
10/92	Democratic Senatorial Campaign Committee .....	100
10/92	Montgomery County Democratic Campaign Committee .....	250
5/93	Maryland Dollars for Democrats .....	30

Linda J. Morgan:

3/84	Hart for President Committee .....	100
5/86	Morrissey for Congress (Oklahoma) .....	100
8/92	Lynn Yeakel for Senate (Pennsylvania) .....	60
8/92	Carol Moseley-Braun for Senate .....	60

Joint contributions:

10/88	Democratic National Committee Federal Account .....	5,000
11/92	Democratic National Committee Federal Account .....	1,000

Memberships: My husband and I are both registered Democrats. Otherwise, neither my husband nor I has held any offices in or has been a member of any political parties or election committees during the last 10 years. Professional associations: District of Columbia Bar Association; Women's Bar Association of the District of Columbia; American Bar Association; and Women's Transportation Seminar. School activities: Class Alumni Fund Chair, Sidwell Friends School, Class of 1969; Special Gifts Chair, Vassar College, Class of 1973; Class Chair, Georgetown University Law Center, Class of 1976, Alumni Committee; and Co-Room Parent, Sidwell Friends School, Third Grade Class (daughter's class). Others: Member, Senate Employees Child Care Center Corporation.

Honors and awards: Included in Outstanding Young Women in America, 1980; the Award for Most Outstanding Student Contribution to the Georgetown University Law Center, 1976; and cum laude graduate, Sidwell Friends School, 1969.

Published writings: None. During law school, in my capacity as a Research Assistant to a professor, I did research for, and worked on draft parts of, articles on administrative and antitrust law which were later published under his name.

#### PREHEARING QUESTIONS ASKED BY THE COMMITTEE AND ANSWERS THERETO BY MS. MORGAN

##### GENERAL

**Question.** What significant experience have you drawn from your positions with this Committee, and how will you apply this expertise to serve effectively as Commissioner of the Interstate Commerce Commission (ICC), if confirmed?

**Answer.** During my 15 years with the Senate Commerce Committee, first as a Democratic Staff Counsel for surface transportation and for the last 7 years as General Counsel, I have been involved in many legislative initiatives affecting the surface transportation industry. These efforts have included the passage and oversight of the Staggers Rail Act of 1980, the Motor Carrier Act of 1980, the Bus Regulatory Reform Act of 1982, the Household Goods Movers Act of 1982, the Surface Freight Forwarder Deregulation Act of 1986, and the Negotiated Rates Act of 1993, all of

which the Interstate Commerce Commission (ICC) is responsible for implementing. In addition, I have been involved in other significant surface transportation initiatives, including the restructuring of Amtrak, Conrail and other railroads, and major safety legislation affecting the rail and motor carrier industries. Furthermore, I have worked on many legislative initiatives affecting other regulated industries within the jurisdiction of the Committee.

Through my work on these initiatives, I have developed an in-depth knowledge of surface transportation economic and safety issues and regulatory reform efforts; a valuable perspective on the evolution of the ICC's responsibilities; a familiarity with the interests of affected parties in the surface transportation sector; an appreciation for the views of Congress with respect to the implementation of surface transportation laws; and an understanding of the overall impact of regulatory policy and regulation. This experience, coupled with my legal background and training, makes me particularly qualified to serve as an ICC Commissioner, and well-positioned in that capacity to make a significant contribution to the future of the Nation's surface transportation network.

#### FREIGHT MOTOR CARRIERS

*Question.* Last session, Congress enacted and the President signed into law the Negotiated Rates Act of 1993 (NRA), which sought to resolve the controversy generated by bankrupt carriers retroactively claiming negotiated, but unfiled, rates against shippers. Recent reports indicate that this "negotiated rates" issue remains unresolved, as a number of trustees and bankruptcy judges have not moved quickly to enforce the new law. What are your thoughts as to any legal strategy that could be pursued to ensure that the rights and benefits of the NRA are expeditiously granted to small businesses, charities, and others?

*Answer.* The ICC has initiated several proceedings and taken certain other actions to implement the Negotiated Rates Act of 1993 (NRA). At the same time, certain bankruptcy trustees have pursued, in court, legal challenges to the NRA, arguing that the provisions of the NRA are not applicable to claims involving carriers in bankruptcy. There have been differing lower court rulings issued on the validity of this argument. If such an argument were to prevail ultimately, many shipping businesses that otherwise would be covered by the dispute resolution provisions of the NRA would not be able to avail themselves of these provisions. I understand that certain court rulings are being appealed, and that the ICC General Counsel's office is exploring other legal remedies that might be available to ensure that the NRA provisions can be implemented. While it may not be appropriate for me in this context and at this time to discuss specific legal or other strategies that could be pursued by the ICC or other parties, one of my priorities, if confirmed as ICC Commissioner, is to pursue this matter vigorously with my fellow Commissioners and the staff at the ICC to ensure that the NRA is implemented as Congress intended.

*Question.* Do you have a view regarding proposals to deregulate further the trucking industry?

*Answer.* The ICC has been given certain regulatory authority over the trucking industry. Until Congress decides to alter the laws governing the ICC authority in this area, the ICC is responsible for continuing to implement the current law. If confirmed as ICC Commissioner, I would be committed to implementing the laws as passed by Congress. I know that certain proposals have been offered to further deregulate the trucking industry. As Congress continues its oversight of the current law in this area and its appropriateness and effectiveness, I, if confirmed, would join my fellow Commissioners in bringing the expertise of the ICC to this review.

*Question.* How would you assess the overall impact of the Motor Carrier Act of 1980 on the trucking industry and the shipping public?

*Answer.* The Motor Carrier Act of 1980 was intended to promote a more efficient and competitive trucking industry able to offer more price and service options to shippers. It is generally accepted that, looking at the industry in its entirety, these objectives has been met, although concerns have been raised that certain segments of the industry, specifically the less-than-truckload sector, have experienced numerous bankruptcies.

#### ICC STREAMLINING

*Question.* Based on your observations of the ICC and your knowledge of transportation industries and economic regulation, what is your view on a proposed sunset of the ICC?

*Answer.* I approach this question with a belief that, because of their independence, independent regulatory agencies have important roles in policy implementation. As one such independent regulatory agency, the ICC has been given important

authority by Congress with respect to economic regulation and the promotion of a sound transportation system in the public interest. In implementing this authority, the ICC, like any other agency, must continue to evaluate its activities and to work with Congress to ensure that it is using its resources appropriately and productively. If confirmed as ICC Commissioner, I look forward to working with Congress as it proceeds with its oversight of the ICC and its review of these issues.

*Question.* Are there any areas where you would favor a reduction of the ICC's regulatory activities?

*Answer.* The ICC is to carry out its regulatory activities in accordance with the responsibilities given to it by law. It is for Congress to decide whether and when certain regulatory responsibilities should no longer be carried out by the ICC. If confirmed, I would be pleased to work with Congress, from the perspective of an ICC Commissioner, in its ongoing review of the appropriateness and effectiveness both of the laws which the ICC implements and of the ICC's implementation activities.

*Question.* The independence of the ICC has been integral to fair resolution of issues which come before the ICC. Are there instances where the ICC shares oversight responsibilities with the Department of Transportation (DOT)? If so, what can be done to improve the cooperation and coordination between the ICC and DOT, so as to avoid duplicative responsibilities?

*Answer.* This issue of duplication between the ICC and DOT has been reviewed in the past, particularly with respect to motor carrier safety fitness. It is generally believed that the two agencies have been successful in removing the duplication that seemed to have existed in this area. Other than this area, I am not aware of any other area where there is specific duplication, but, if confirmed as ICC Commissioner, I will work to ensure that unnecessary and counterproductive duplication is prevented, and that cooperation and coordination between ICC and DOT are promoted.

#### FILED RATE DOCTRINE

*Question.* What are your views on the feasibility of the filed rate doctrine?

*Answer.* The filed rate doctrine is an outgrowth of existing law which requires the filing of motor common carrier tariffs and provides that, in order for a common carrier rate to be valid, it must be filed. The recent undercharge crisis has raised concerns about whether tariff filing continues to be necessary and whether the filed rate doctrine can be enforced effectively. Until existing law is modified by Congress, the ICC has the responsibility to implement the filed rate doctrine and the tariff filing requirements. If confirmed as ICC Commissioner, I would be pleased to work with Congress, in its oversight of the ICC, on the implementation of the current law and on issues that have been raised regarding the filed rate doctrine.

*Question.* Do you have any suggestions concerning improving the effectiveness of this doctrine? What about the advantages of electronic filing?

*Answer.* With a view toward improving the effectiveness of the filed rate doctrine and tariff filing enforcement, transportation appropriations report language directed the ICC to report on the implementation of electronic tariff filing. In response to this directive, the ICC recently decided to pursue electronic tariff filing and approved issuing a notice of proposed rulemaking to form an industry advisory committee to recommend cost-effective ways to implement such a system. These further steps are intended to ensure a better assessment of the specific benefits and costs of such a system. If confirmed as ICC Commissioner, I intend to monitor the progress of this proceeding closely and examine carefully this entire area of tariff filing and its enforcement.

#### RAILROAD INDUSTRY

*Question.* How well do you believe the Staggers Rail Act of 1980 has worked in improving the health of the nation's rail industry?

*Answer.* One of the main purposes of the Staggers Rail Act of 1980 was to improve the financial health of the freight rail industry. Prior to passage of this Act, the industry had experienced widespread bankruptcies and steady financial decline. It is widely accepted that, since the passage of the Staggers Rail Act, the financial picture of the rail industry has improved significantly, and it is now a more competitive industry that is able to provide good-quality, bust-in-time service to its customers, and to respond to price and service needs of individual shippers.

*Question.* What criteria do you believe to be important in reviewing a request for authority to abandon a segment of rail line?

*Answer.* Under the current law, the ICC must consider various factors in determining how to proceed with a request by a railroad to abandon a line. These factors include the impact on service to the local shippers and communities that are af-

fects, the effect of continuing operation of the line on the railroad seeking abandonment authority, and offers to subsidize operation of the line or to purchase it. These factors reflect a delicate balance that must be achieved between the need for the railroads to be able to abandon unprofitable lines and the importance of continued rail service to local shippers and communities. These statutory factors to be considered are to be carefully applied to each case. While I cannot comment in any way that would suggest a prejudgment of any abandonment case, if confirmed as ICC Commissioner, I will examine thoroughly the facts of each abandonment case and carefully apply the statutory factors to each set of facts.

*Question.* Do you have any general views on resolutions between the Railway Labor Act and the Interstate Commerce Act with regard to labor protection when dealing with rail line sales, abandonment applications and requests for merger authority?

*Answer.* The legal relationship between the Railway Labor Act and the Interstate Commerce Act as it impacts the imposition of labor protection in certain rail restructuring cases continues to be the subject of litigation in which the ICC is involved. A key issue is the extent to which certain aspects of existing labor agreements can be legally altered as part of such rail transactions, and a resolution of this issue has an important impact on the rights of rail employees as envisioned under the law. As this matter is the subject of pending cases before the ICC, if confirmed as ICC Commissioner, I look forward to reviewing carefully the cases at issue and will take seriously my decision-making responsibilities in this area.

#### INTERCITY BUS SERVICE

*Question.* What are your views on the current state of intercity bus service? How do you evaluate the effectiveness of the Bus Regulatory Reform Act of 1982?

*Answer.* The Bus Regulatory Reform Act of 1982 was intended to allow the industry to streamline its operations and become financially stronger. It is widely accepted that these goals have been achieved in the intercity bus industry. However, concerns have been raised about the loss of intercity bus service to certain rural areas since passage of that Act and how smaller bus carriers could be encouraged to enter and continue to serve these markets. In addition, concerns have been raised about alleged anti-competitive behavior on the part of larger carriers against smaller carriers and its detrimental impact on the competitiveness of the intercity bus service in certain areas. In July 1993, the Office of Economics at the ICC completed a study of the general state of the intercity bus industry and concerns that had been raised. This study was submitted to the ICC Commissioners, and, if confirmed as ICC Commissioner, I look forward to reviewing this study carefully and discussing this matter thoroughly with the other Commissioners.

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#### PREHEARING QUESTIONS ASKED BY SENATOR PRESSLER AND ANSWERS THERETO BY MS. MORGAN

##### PRIORITIES FOR THE INTERSTATE COMMERCE COMMISSION

In my judgment, you are very qualified to serve in the capacity as Commissioner of the Interstate Commerce Commission. During your 15 years of experience on the Commerce Committee, you have continually demonstrated your professional abilities.

*Question.* What are your priorities to advance the ICC's promulgated purpose?

*Answer.* As an independent regulatory agency created by Congress, the Interstate Commerce Commission (ICC) has important responsibilities by law to promote a sound transportation system and to protect the public interest in the exercise of its regulatory authority. This mandate requires a delicate balance of many objectives which have a profound impact on carriers, shippers, employees, local communities and consumers throughout the country. If confirmed as ICC Commissioner, I am committed to ensuring that the ICC implements its responsibilities with a sensitivity to this delicate balance.

The ICC has authority in many important areas in which it can promote a sound transportation system in the public interest and affect significantly the economic development and competitiveness of our country. For example, in the rail area, it has responsibility regarding competitive rail service through its authority over rail mergers, abandonments, and line sales. It has authority with respect to rate reasonableness and the application of labor protection requirements. In the motor carrier area, it has responsibility with respect to the safety fitness of motor carriers, the applicability of motor carrier rates, and the competitiveness of the intercity bus and trucking industries. In addressing these and other issues, the ICC has been given

important implementing authority under such laws as the Staggers Rail Act of 1980, the Motor Carrier Act of 1990, the Bus Regulatory Reform Act of 1982, the Household Goods Movers Act of 1982, the Surface Freight Forwarder Deregulation Act of 1986, and the Negotiated Rates Act of 1993. If confirmed, I will take seriously the responsibility of the ICC in all of these areas to implement the law as intended by Congress.

In implementing the authority granted to the ICC, my personal priority, if confirmed as ICC Commissioner, is to review fairly and objectively each case and issue to ensure that all facts are understood and the views of all parties are considered. If confirmed, I intend to work with the other ICC Commissioners to foster and maintain a spirit of creativity, impartiality, and consensus so that the ICC can secure the confidence and credibility needed to facilitate the resolution of the difficult issues before it.

#### UNION PACIFIC (UP) AND CHICAGO AND NORTHWESTERN RAILROAD (C&NW) CONTROL CASE

As you know, one of the most important issues currently before the ICC is the application by Union Pacific to control the Chicago and Northwestern (C&NW) Railroad. This matter is of great importance to rail shippers in South Dakota. In fact, the ICC held a hearing on this issue in Rapid City, South Dakota, in December 1993. In brief, the C&NW's Colony Line is the only rail line serving western South Dakota to the south. Unfortunately, this line is in dire need of service improvements.

Shippers are legitimately frustrated over prolonged inaction to upgrade the Colony line and are concerned that without commitments from C&NW and UP, their needs will be ignored. Therefore, I have urged the ICC to require assurances from C&NW and UP that necessary improvements to trackage and equipment be provided and am reserving my final position on UP's proposal until such commitments are received.

*Question.* While I will not ask you detailed questions regarding the UP case, I would like to know your general philosophy on the ICC's role in such matters. Will you work to ensure the concerns of South Dakota's shippers are addressed as a part of UP's proposed control transaction? To what extent should the ICC go to ensure short line rail service that feeds into larger carriers is not unduly jeopardized by approval of this control application?

*Answer.* As this matter is pending before the ICC, I must be careful in answering your question not to comment in any way that would indicate a prejudging of the case before I am confirmed as Commissioner and have reviewed thoroughly, as a Commissioner, the entire record developed in the case. With this caveat in mind, I can assure your that I understand the importance of this proceeding and will review carefully the record in this matter, if confirmed.

Regarding the interests of South Dakota shippers, as in any rail control or other restructuring case, the ICC must consider the interests of affected shippers and communities as well as other interests. With respect to the UP/C&NW control case, the ICC thus must take into account the interests of South Dakota shippers as well as those users in other areas affected by the proposed transaction between these two railroads. If confirmed as ICC Commissioner, I will review carefully the record developed in this case, keeping in mind the need to consider all of these interests.

With respect to existing shortline service in the affected area, in any rail control or other restructuring case, the ICC must consider the impact of such a restructuring on the existence of competitive rail service. With respect to the UP/C&NW control case, the ICC must consider the impact of the restructuring on existing rail service as well as on other interests. If confirmed as ICC Commissioner, I will review carefully the record with this issue of existing rail service in mind.

The CHAIRMAN. Thank you, Ms. Morgan. I came to know Linda through Mr. Ed Morgan, who was a very close friend of my senatorial hero, Henry "Scoop" Jackson of Washington, in addition to Dick Russell of Georgia. I learned that not only was Linda brilliant, but she had excellent judgment, and she is one of the hardest workers we have ever had.

And I guess the committee members should know my feeling that whenever she was asked her counsel as the general counsel of this committee, it was always in a bipartisan or nonpartisan fashion. I

never got any advice from her on a bill or measures or anything else that would favor any particular political point.

Linda's efforts have contributed to the passage of the Staggers' Rail Act of 1980, the Motor Carrier Act of 1980, the Bus Regulatory Reform Act of 1982, and the Negotiated Rates Act of 1993. We had to have her particular attention, because with the deluge of issues facing us over the years here on this committee, transportation matters may not have received as much attention.

We found out when deregulation fever hit us in one fell swoop in the early eighties—that the Government was not the solution, but the problem; get rid of Government; abolish the Education and Energy Departments; and by all means deregulate all the administrative agencies. We found ourselves in the vanguard trying to save the ICC. The Interstate Commerce Commission has been recommended for redlining and elimination for many years. There is still, in my judgment, the need for protecting the public interest in transportation.

We do not want to turn the rates between the shippers and carriers, be it motor or rail carriers or otherwise, into a taxi stand. I do not know where it started, but somehow there is still that fever that we in the Congress create competition. You do not have to even dream or wonder about it; competition is anywhere there is money. They will go to the long rails and the long hauls and the profitable. There is never any competition at the unremunerative, more-difficult-to-serve rural and small town areas.

And, yes, if we had done away with the ICC and all of regulation, we would find just the metropolitan and rich areas of the country being served, and we would have required the closing down of the railheads and shipping services in the small communities of America. In the end instance where we thought we had achieved competition, competition, competition, what we had done is disregarded the shipping public and really hurt what this country has developed into, generally speaking, the No. 1 Nation in transportation of all competing countries. In the United States we still have the best of all transportation and I think we must continue this phase of development, with the Interstate Commerce Commission.

I wanted to make that statement on record with your confirmation, Ms. Morgan, because you have been part and parcel of the vanguard helping us save the ICC. I know you have a conscientious charge in your own heart and mind of the need and responsibility of the ICC, and I hope we can give it more attention.

Are there any questions?

[No response.] [Laughter.]

The CHAIRMAN. Well, this is remarkable. I really thank you and we will leave the record open for questions, but it is the intent of the committee, I think, to move your confirmation forward and onto the floor for Senate action.

Ms. Morgan, just keep your seat there. We are going to have a slow rollcall here, we hope.

[Whereupon, at 10:30 a.m., the hearing adjourned.]

## APPENDIX

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### PREPARED STATEMENT OF SENATOR EXON

Mr. Chairman, I am proud to enthusiastically support Linda Morgan's appointment to the Interstate Commerce Commission. I can think of no individual so deserving or well prepared for this important position. I have been pushing for this nomination since before President Clinton took office.

Linda Morgan has served the Senate Commerce Committee, the U.S. Senate, and her country with professionalism, distinction, and honor. In all the years I have known Linda, I could always count on her honesty, good judgment, and sound advice. While I will miss Linda here in the Senate, her talents are needed and will be well used by the Interstate Commerce Commission.

Too often the work of the ICC is taken for granted. As the Nation's oldest independent agency, the ICC oversees the economic regulation of commercial surface transportation, it resolves disputes between communities and railroads, shippers and carriers, and between Amtrak and the Nation's freight railroads. In the coming months, the ICC will undertake one of its most important tasks and that is implementing the Negotiated Rates Act which Congress enacted last year to put an end to the undercharge crisis.

Like everyone on this committee and associated with this committee, I am very proud of Linda and have every confidence that she will do a great job at the Interstate Commerce Commission.

Thank you, Mr. Chairman.

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